IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

OP.No. 28381 of 2002(D)

PETITIONER:

E.P.PREMITH, JESNA NIVAS,
NEAR STATE BANK OF INDIA, THAVAKKARA, KANNUR.

BY ADV. SRI.K.ANAND

RESPONDENTS:
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1. THE LABOUR COURT, KANNUR, REPRESENTED
BY ITS PRESIDING OFFICER.

2. THE MANAGING DIRECTOR, PIONEER MOTORS
(PVT.) LTD., KANNOTHUMCHAL, KANNUR.

BY ADV. SRI.P.V.SURENDRANATH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD

ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING:

APPENDIX (WP(C) NO.28381 OF 2002)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of order dtd.6.6.2002 in C.P.16/99 filed by the petitioner before the Labour Court, Kannur.

Ext.P2: Copy of Agreement dtd.11.3.99 executed by the Union representing the dismissed workers and the management.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

O.P.NO. 28381 OF 2002

Dated this the 15th day of March, 2007

J U D G M E N T

The workman in a proceedings under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') before the Labour Court, Kannur is the petitioner herein. The claim petition namely, C.P.No.16 of 1999 claiming arrears of wages was dismissed by the Labour Court by Ext.P1 order as not maintainable under Section 33C(2) of the Act . The above order is under challenge in this writ petition.

2. The Labour Court found that the very status of the workman as a regular worker has been disputed by the Management. The Management specifically contended that he was originally only a helper trainee from August 1996 to September 1998 thrice in a week and after that, he was given opportunity to work as a temporary helper thrice in a week from October 1998 to 27th February 1999. They also contended that he was paid all the benefits due to him as a trainee on the days on which he attended as trainee from August 1998 to September 1998. Thereafter, he was paid benefits applicable to

temporary helper on the days on which he attended the establishment as temporary helper. The Management raised a further contention that subsequently, the petitioner was retrenched from service along with some other workers, in respect of which the union representing the petitioner and others had raised an industrial dispute in which the matter was settled between the parties by paying some amount in full and final settlement of all the claims of the workmen involved in the dispute including the petitioner-workman. In respect of the dispute regarding the status of the workman and his claim itself, the Labour Court was of the view that they are beyond the scope of adjudication in a proceedings under Section 33C(2) of the Act.

3. The learned counsel for the petitioner contends that although initially a dispute was raised on behalf of the petitioner by a union, in view of the unfavourable attitude of the union in the conciliation proceedings, even before the conciliation proceedings were over, the workman had resigned from the membership of the union. He also did not agree with the settlement arrived at and therefore that

settlement could not have been relied upon by the Labour Court to dismiss the claim petition, contends the petitioner-workman.

4. I have considered the rival contentions in detail. The jurisdiction of the Labour Court under Section 33C(2) of the Act is clearly defined by various decisions of this Court and the Supreme Court. It is settled law that the proceedings under Section 33C(2) of the Act is in the nature of the execution proceedings and only if there is already a crystallised right, the workman can validly maintain a petition under Section 33C(2) of the Act. In this case, although the petitioner claimed that he was a workman-mechanic in the establishment of the management, that was categorically disputed by the Management and they had specifically stated that he was originally only a helper trainee for thrice in a week, and thereafter only a temporary helper thrice a week. In respect of the settlement also, there is a clear dispute between the management and the petitioner-workman. Therefore, in all respects, it cannot be said that the petitioner's right has already crystalised so as to enable the

petitioner to claim the same in terms of money under Section 33C(2). That being so, the finding of the Labour Court that in respect of the claim of the petitioner, without an adjudication proceedings, a petition under Section 33C(2) of the Act is not maintainable, appears to be correct.

5. The learned counsel for the petitioner also submits that the finding of the Labour Court that the settlement is binding upon him is not correct since according to him, even before the settlement was signed, he had resigned from the membership of the union which participated in the conciliation proceedings and therefore, the settlement cannot be said to be binding on the petitioner. I am of the opinion that the question as to whether the settlement is binding upon the petitioner-workman is to be left open to be agitated by him in appropriate proceedings. I am of the opinion that the very fact that there is a dispute regarding the applicability of the settlement itself is ground enough to hold that in respect of the claim of the petitioner, the petition under Section 33C(2) is not maintainable. Therefore, while leaving the question as to whether the

settlement relied upon by the Management is binding on the petitioner open, this writ petition is dismissed holding that Ext.P1 order of the Labour Court holding that the petitioner's claim is not maintainable under Section 33C(2) of the Act, is correct. Petitioner also submits that he is not receiving the amount as per Ext.P2 which also is a matter in dispute which the petitioner can agitate in appropriate proceedings.

The writ petition is accordingly dismissed with the above observations.

S. SIRI JAGAN,
Judge

Mbs/

K.THANKAPPAN, J

Crl.Appeal NO. OF 2001

J U D G M E N T

DATED:13-02-2007